

REMARKS

This Application has been carefully reviewed in light of the Final Action dated April 25, 2006. Applicant respectfully requests reconsideration and favorable action for this Application.

Claims 1-3, 5, and 22-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Caccavale, et al. Independent Claims 1 and 22 recite in general predicted responsiveness indicators being operative to predict a response time of each of the plurality of servers based at least in part on a previous time stamp of a response time measurement, a current time stamp, and an aging factor applied to a difference between the previous time stamp and the current time stamp gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. By contrast, the Examiner readily admits that the Brendel, et al. patent fails to disclose the use of predicted responsiveness indicators to predict server response time. To support the claimed predicted responsiveness indicators and prediction of server response time, the Examiner cites the Caccavale, et al. patent in combination with the Brendel, et al. patent. However, the Caccavale, et al. patent merely discloses sending out probes and identifying the length of time it takes a server to respond to the probe. The measured response time information is merely compared to baseline response time information and previous response time information to determine how much, if any, the server's response time has degraded. The Caccavale, et al. patent does not disclose the use of an additional aging factor applied to certain time stamps associated with its measured server length of response time. Thus, the Caccavale, et al. patent does not take into account an aging factor as

provided by the claimed invention. The portion of the Caccavale, et al. patent cited by the Examiner merely discloses comparing the current response time information for a probe to baseline response time information and previous response time information for that probe. The degradation values obtained from these comparisons merely identify whether a server is overloaded. However, there is no aging factor applied to any response time information in the Caccavale patent. Thus, the Caccavale patent does not predict a response time of each of the plurality of servers based at least in part on an aging factor applied to a time stamp difference as required by the claimed invention. The Examiner states that the Caccavale, et al. patent compares a response time with prior response times to create a relative degradation. However, the total response time disclosed by Caccavale, et al. patent is based on a difference between a second timestamp (timestamp2) and a first timestamp (timestamp1). Though this response time may represent an aging, the Caccavale, et al. patent fails to disclose that an aging factor is applied to its timestamp2 - timestamp1 difference. Thus, the Caccavale, et al. patent fails to apply an aging factor to its total response time as required by the claimed invention. Therefore, Applicant respectfully submits that Claims 1-3, 5, and 22-25 are patentably distinct from the proposed Brendel, et al. - Caccavale, et al. combination.

This Response to Examiner's Final Action is necessary to address the Examiner's interpretation of the cited art and the language of the claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the current interpretation in support of the rejection to the claims.

CONCLUSION

Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

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